

***United States Court of Appeals
for the Second Circuit***



APPENDIX

ORIGINAL

74-1042

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P/L

United States Court of Appeals

For the Second Circuit.

UNITED STATES OF AMERICA,

Appellee,

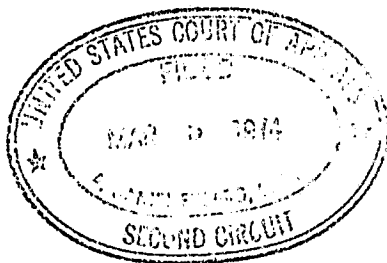
v.

LAM MAN CHUNG,

Appellant.

*On Appeal From A Judgment Of The
United States District Court For
The Southern District of New York*

APPENDIX FOR APPELLANT LAM



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FILED 12/28/73
JUDGE LASKER

73 CRIM 920

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	For U. S.:
VS.	Eugene F. Bannigan, USA
WING PIU LAI -1,2,3& 6	264-6345
YUET LAN LAI - 1,2,3 & 6	
JUAN PANG CHEA -1,2 & 4	
LAM MAN CHUNG, a/k/a Ja B Lam -1 & 5	
	For Defendant:

ABSTRACT OF COSTS	AMOUNT	CASH RECEIVED AND DISBURSED			
		DATE	NAME	RECEIVED	DISBURSED
Fine,					
Clerk,					
Marshal,					
Attorney,					
TELEPHONE T. 21					
BOOKS 846,812,841(a)(1)					
(b)(1)(A) Distr. and possess.					
Intent to distr. Schedule I (Heroin) Cts. 2-6)					
conspiracy so to do. (ct. 1)					
(Six Counts)					

DATE	PROCEEDINGS
1-28-73	Filed indictment. (73Cr694, 73Cr703, 73Cr828 related (Lasker, J.
2-2-73	Filed Govt's amended bill of particulars.
10-5-73	LAM MAN CHUNG - Filed affdvt. for W/H/C Ad Pros. Writ issued. Rct. 10-8-73.
*	
10-26-73	LAM MAN CHUNG - Filed request to charge.
10-8-73*	Suppression hearing begun.
10-9-73	Suppression hearing cont'd.
10-10-73	Jury Trial begun before LASKER, J.
	(cont'd on page 2)

73 CRIM 920

DATE	PROCEEDINGS	CLERK'S FEES			
		PLAINTIFF		DEFENDANT	
10-11-73	Trial Cont'd. YUET LAN LAI severed on motion.				
10-12-73	Trial cont'd.				
10-15-73	Trial cont'd.				
10-16-73	Trial cont'd.				
10-17-73	Trial cont'd & adjd until 11-5-73.				
11-5-73	Trial cont'd.				
11-6-73	Trial cont'd.				
11-7-73	Trial cont'd. Ct. 1 dismissed as to deft. LAM MAN CHUNG on motion.				
11-8-73	Trial cont'd and concluded. Jury verdict:				
	Deft. WING PIU LAI - GUILTY cts. 1,2,3 & 6.				
	" JUAN PANG CHEA - GUILTY cts. 1,2 & 4.				
	" LAM MAN CHUNG - GUILTY ct. 5.				
	Deft's in custody - Sentence date set for 12-21-73. LASKER, J.				
12-7-73	LAM MAN CHEUNG-Filed deft's affdvt & notice of motion for an order vacating the conviction.				
12-7-73	LAM MAN CHEUNG-Filed deft's memorandum of law.				
12-10-73	YUET LAN LAI - Filed Waiver of trial by jury. Approved LASKER, J.				
12-28-73	WILLIAM LAM- Filed notice of appeal from judgment of December 21. m/n				
12-21-73	WING PIU LAI - Deft.(Atty Present) Filed J/C Judgment # 74-121				
	It Is Adjudged that the deft. is hereby committed to the custody of the Atty. Gen. or his authorized representative for imprisonment for a period of TEN (10) YEARS on each of cts. 1,2,3 & 6 respectively, the sentence to run concurrently and not consecutively and shall total fine of \$40,000. to be paid within ninety days hereof. The deft. shall serve a special parole (cont'd on page 3)				

DATE	PROCEEDINGS
	(cont'd from page 2) term of THREE (3) YEARS subject to the provisions of Title 21, Section 841(b)(1)(A) and 4208 a (2). LASKER, J. (copies issued)
12-21-73	JUAN PANG CHEA - Deft. (Atty. Present) Filed J/C # It Is Adjudged that the deft. is hereby committed to the custody of the Atty. Gen. or his authorized representative for imprisonment for a period of SEVEN (7) YEARS on each of cts. 1, 2 & 4 respectively, the sentence to run concurrently and not consecutively, and shall be fined the sum of \$3,333.33 on each cts. for a total fine of \$9,999.99 to be paid within ninety days hereof. The deft. is to stand committed for non-payment and upon the completion of the term of custody, the deft. shall serve a special parole term of THREE (3) YEARS subject to the provisions of Title 21, Section 841(b)(1)(A). LASKER, J. (copies issued)
12-10-73	Non-Jury Trial begun before LASKER, J. Adj. until 12-20-73.
12-20-73	Trial Contd. and concluded.
12-21-73	Court verdict - Deft. YUET LAN LAI acquittal. LASKER, J.
1-4-74	LAM MAN CHUNG - Filed W/H/C/ Ad Pros. Writ satisfied 12-21-73. LASKER, J.
12-21-73*	LAM MAN CHUNG - Filed Judgment # It Is Adjudged that the deft. is hereby committed to the custody of the Atty. Gen. or his authorized representative for imprisonment for a period of FIVE (5) YEARS, said term of custody to commence upon the expiration of the term of custody presently being served for conviction under indictment 73 Cr. 443, and deft is fined the sum of \$5,000, to be paid within ninety (90) days hereof, the deft. to stand committed for non-payment, and upon the expiration of the term of custody imposed herein, the deft. shall serve a special parole term of six years subject to the provisions of Title 21, Section 841 (b)(1)(A). This sentence is subject to the provisions of 18 U.S.C. 4208 (a)(2) permitting the deft. to become eligible for parole at such time as the board of parole may determine. LASKER, J. (copies issued)
1-3-74	Filed MEMO END on Deft. LAM MAN CHEUNG motion filed Dec. 7-73. Motion denied for the reasons stated on the record in open court when a similar motion by Lan Man Cheung's Atty. was denied, & on the authority of Ottamano -v- U.S. 468 F(2) 269 (1st Cir 1972) Cert. Den. 409 US 1128(1973) and the cases cited in the brief of the U.S. in opposition to this motion. It Is So Ordered. LASKER, J. (n/m)
1-8-74	Filed Govt. memo of law.
Jan 16, 74	Filed Transcript of proceedings dated Oct 8, 9, 10, 1973
Jan 16, 74	Filed Transcript of proceedings dated Oct 10, 11, 1973
Jan 16, 74	Filed Transcript of proceedings dated Oct 15, 16, 17 & Nov 5, 6, 7, 1973

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

- v -

WING PIU LAI, YUET LAN LAI, JUAN PANG
CHEA and LAM MAN CHUNG, a/k/a JA B Lam,

Defendants .

INDICTMENT

S 73 Cr.

The Grand Jury Charges:

1. From on or about the 1st day of July, 1972
and continuously thereafter up to and including the date of
the filing of this indictment, in the Southern District of
New York, WING PIU LAI, YUET LAN LAI, JUAN PANG CHEA and
LAM MAN CHUNG a/k/a JA B Lam,

the defendants and others to the Grand Jury unknown, unlaw-
fully, intentionally and knowingly combined, conspired, confederated
and agreed together and with each other to violate Sections 812,
841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

2. It was part of said conspiracy that the said
defendants unlawfully, intentionally and knowingly would distribute
and possess with intent to distribute Schedule I and II
narcotic drug controlled substances the exact amount thereof
being to the Grand Jury unknown in violation of Sections 812,
841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

EPN:al
73-2284

SECOND COUNT

The Grand Jury further charges:

On or about the 25th day of June, 1973,
in the Southern District of New York,

WING FID LAI, YUET LAN LAI and JUAN PABLO CETA,

the defendant^s, unlawfully, intentionally and knowingly
did distribute and possess with intent to distribute a
Schedule I narcotic drug controlled substance, to wit,
approximately one pound of heroin hydrochloride.

Title 21, United States Code, Sections 812,
841(a)(1) and 841(b)(1)(A).)

OVERT ACTS

In pursuance of the said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York:

1. On or about July 11, 1973, WING PIU LAI and YUET LAN LAI entered the National Bank of North America, 44 Wall Street, New York, New York.
2. On or about July 11, 1973, WING PIU LAI met JUAN PANG CHIA in the vicinity of 177 Christie Street, New York, New York.
3. On or about July 11, 1973, WING PIU LAI, YUET LAN LAI and JUAN PANG CHIA entered 261 Broome Street, New York, New York.
4. On or about July 11, 1973, LAM MAN CHUNG, a/k/a JA B Lam entered 261 Broome Street, New York, New York.
5. On or about July 11, 1973, LAM MAN CHUNG, a/k/a JA B Lam entered 261 Broome Street, New York, New York.

WFE:a1
73-2284

THIRD COUNT

The Grand Jury further charges:

On or about the 11th day of July, 1973
in the Southern District of New York,

WANG PIU LAI and YUET LAN LAI,

the defendant s, unlawfully, intentionally and knowingly
did distribute and possess with intent to distribute a
Schedule I narcotic drug controlled substance, to wit,
approximately two pounds of heroin hydrochloride.

(Title 21, United States Code, Sections 812,
841(a)(1) and 841(b)(1)(A).)

USA-33s-527A - IND/INF - Distrib. Possess Narc. Drug (Succeeding Count)
Rev. 5-27-72

100:01
70-0286

RETURN COUNT

The Grand Jury further alleges:

On or about the 11th day of July, 1973,
in the Southern District of New York,

JOHN PAUL GEE,

the defendant, unlawfully, intentionally and knowingly
did distribute and possess with intent to distribute a
Schedule I narcotic drug controlled substance, to wit,
approximately two pounds of heroin hydrochloride.

(Title 21, United States Code, Sections 812,
841(a)(1) and 841(b)(1)(A).)

USA-33s-528A - IND/INF - Possession With Intent to Dist. Narc. Drug
Rev. 5-27-72 (Succeeding Count)

EX-11:22
72-528A

~~Count~~ COUNT

The Grand Jury further charges:

On or about the ~~11th~~ day of ~~July~~, 1973,
in the Southern District of New York,

~~Lawrence Green, a/k/a SA B Lee,~~

the defendant, unlawfully, intentionally and knowingly
did possess with intent to distribute, a Schedule I
narcotic drug controlled substance, to wit, approximately
one pound of heroin hydrochloride.

(Title 21, United States Code, Sections 812,
841(a)(1) and 841(b)(1)(A).)

~~EX-11:22~~
72-528A

~~EX-11:22~~
72-528A
United States Attorney

1 Ajw 1

1272

2 UNITED STATES OF AMERICA

3 -against-

72 Cr. 320

4 WING PIU LAI, et al,

5 Defendants.

7 February 8, 1973
8 10:10 A.M.

9 B E F O R E :

10 HON. MORRIS E. LASKER,

11 District Judge.

13 A P P E A R A N C E S :

14 PAUL J. CURRAN, ESQ.,

15 United States Attorney for the
Southern District of New York

16 DANIEL J. PYKETT, ESQ.,

Assistant United States Attorney

17 ALAN ROSSNER, ESQ.,

18 Attorney for Defendant Juan Pang Chea

19 GILBERT S. ROSENTHAL, ESQ.,

20 Attorney for Defendants Wing Pin Lai and
Yuet Lan Lai

21 IVAN FISHER, ESQ.,

22 Attorney for Defendant Lan Man Chung

23 ALSO PRESENT:

24 SHIRLEY HOY,

25 Official Chinese Interpreter

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(Jury present)

THE COURT: Good morning, ladies and gentlemen.

We have had no proclamation this morning. We usually do, and I had prior proceedings before court opened before you arrived here, and I mention that because I don't want you to think that this part of the trial is not an important part of the trial.

There is no point in comparing the relative importance, I suppose, but just as I asked you to pay close attention yesterday to what the attorneys have had to say, I ask you to pay close attention today and it may require greater concentration because I may be using some fancy words, not, perhaps, as bad as mass spectrometry, and things like that, but technical words, and you will have to be paying close attention to what is said.

I wish it were possible simply to chat with you and tell you what the law is, because I think in that fashion I communicate better and you perhaps can listen more easily, but the law has become rather complicated, like everything else in life, and we want to be very careful in matters of this kind that we don't make any mistakes, so it is pretty much the custom, at least in this court, and I think more and more throughout the country now, that we put what we have to tell the jury

All

1 mjw 3

2 in writing, and I will be reading it.

3 If I read too fast, and the reporters have some-
4 times told me I have a tendency to do that, so that you
5 don't get the full significance of what I am saying,
6 please raise your hand and let me know and I will bear
7 that in mind.

8 This is a fairly long charge of about 50 pages.
9 I think you can listen to it and absorb it easily enough
10 in one sitting, but if you find your attention flagging,
11 or any difficulty in that regard, also please raise your
12 hand and we will take five minutes inbetween then I will
13 resume.

14 Now, before I start reading my charge I want
15 to tell you as was indicated yesterday that although Mr.
16 Lam Man Chung, the defendant at the table here who is
17 wearing the dark glasses, was originally charged in the
18 conspiracy, count number 1 of this indictment, for reasons
19 that are not of your concern that charge no longer applies
20 to him. Therefore, my instructions with regard to the
21 conspiracy count when I come to them will relate only
22 to Mr. Lai and Mr. Chea.

23 The second point that I wanted to make was that
24 yesterday in his closing statement Mr. Bannigan referred
25 to Mr. Sang as a defendant in this case. That was an

A12

inaccuracy. Mr. Sang is charged as a co-conspirator in the indictment here, but he is not charged as a defendant.

Ladies and gentlemen, now that you have heard the testimony and the arguments of counsel, the time has come to instruct you as to the law governing the case. You have been chosen and sworn as jurors in this matter to try the issues presented by the allegations of the indictment and on your determination of the facts, and I stress the word "your" to decide under the law as I shall instruct you whether any of the defendants has or has not been proven guilty beyond a reasonable doubt of any of the charges against him.

I will discuss those charges with you in a moment in detail, but first I want to say that you are to perform your duties as jurors without bias or prejudice to or for anybody, whether the government or any of the defendants.

The law does not permit jurors, and you wouldn't want it to permit jurors, to be governed either by sympathy or swayed by prejudice or public opinion.

Now, we start with the proposition that we started with at the outset of this trial, that is, that the law presumes every defendant to be innocent of any charge against him. You will recall that when you were

1 mjw 5

2 selected, I specifically asked each one of you if you
3 could enter into the discharge of your duties presuming
4 each defendant to be innocent unless proven guilty beyond
5 a reasonable doubt after your own deliberations, and each
6 of you gave me the answer, yes.

7 This presumption of innocence is sufficient to
8 acquit any defendant unless and until you as jurors have
9 unanimously satisfied yourselves beyond a reasonable doubt
10 of that defendant's guilt from all of the evidence which
11 has been presented.

12 The burden, or responsibility, is on the govern-
13 ment to prove each defendant guilty beyond a reasonable
14 doubt of every essential element of each crime charged,
15 and I will advise you later in this charge just what
16 elements there are to each crime.

17 I also want to remind you of what I mentioned
18 at the outset of the trial, that is that the existence
19 of an indictment does not constitute evidence against
20 any defendant, but is merely a method of bringing a charge
21 against him.

22 Now, I have said, the lawyers have said many,
23 many times throughout this case, that the government
24 has assumed the responsibility of proving each defendant
25 guilty beyond a reasonable doubt. Let me define that

1 mjlw 6

2 important term for you at the outset. 1000

3 A reasonable doubt is not a vague, speculative
4 or imaginative doubt. It is a doubt which, as the phrase
5 suggests, is based on reason which comes either from
6 the evidence that you have heard or from the lack of
7 evidence. That is, what you haven't heard or seen that
8 you feel that you should have.

9 It is a doubt which a reasonable man or woman
10 might entertain. It is a doubt, and I think this is
11 the best definition, which would cause reasonable men
12 and prudent men and women like yourselves to hesitate
13 to act in relation to matters of importance in your own
14 private lives.

15 Let us say that you have an important decision
16 to make. How do you go about making that decision? You
17 think about everything that you know about it. You think
18 about everything that you would want to know, that you
19 haven't been told about it. And you say to yourself,
20 do I have enough information? Do I have enough dependable
21 information so that I am ready to act?

22 If you say, I don't, then you have a doubt.
23 I would describe it as a reasonable doubt. If you say,
24 I do, then you are prepared to make a decision whichever
25 way it is.

1 mjw 7

2 A mere suspicion will not justify a conviction.
3 Suspicion is no substitute for evidence. Nor is it
4 sufficient to convict if you find that the circumstances
5 merely render the guilty of an accused to be probable.
6 The law does not deal in probabilities.

7 Since the burden, or responsibility, is on the
8 prosecution to prove the accused guilty beyond a reason-
9 able doubt of every essential element of the crime charged,
10 a defendant has the right to rely on the failure of the
11 prosecution to establish such proof.

12 A defendant may also, of course, rely upon
13 evidence brought out on cross-examination of government
14 witnesses and on the testimony of his own witnesses.

15 In saying that the government must prove its
16 case beyond a reasonable doubt, if there is to be a
17 conviction, I do not mean to say that the government is
18 required to prove guilt beyond all possible doubt. Indeed,
19 in human affairs it is hard to think of anything that
20 we can prove beyond all possible doubt. But the proof
21 must be of such a convincing character that you would
22 be willing to rely and act on it in the most important
23 decisions of your own affairs.

24 Now, the evidence in this case, as I have told
25 you a number of times, consists of the testimony of the

witnesses, the exhibits which have been received in evidence and facts which have been stipulated, or agreed to by counsel.

You have to decide the case based solely on the evidence, but in your consideration of the evidence you are not limited to the bald statements of the witnesses here. By using the word "bald" I don't mean to suggest anything adverse to any witness, but I mean you are entitled to, and you must think behind the mere words that were uttered.

In deciding the many questions before you it is your job to determine the credibility of the witnesses who have testified before you in this case. Now, now do you go about that? Perhaps the best answer is to say that you determine the truthfulness or accuracy or weight to be given to a witness' testimony in the same way that you would determine such questions in your own personal affairs.

We are all constantly called upon from day to day to determine how much confidence we place in the statements that people make to us. The truthfulness or dependability of a witness, as that of any other person, can be determined by his demeanor, that is, his look, his relationship to the case and to the parties, the possibility of

1 mjw 9

2 his being biased or partial, or of his not being biased
3 or partial. The stake that he may have in the outcome
4 of the case. The reasonableness or unreasonableness of
5 his statements. The extent or weakness of his recollections.
6 And the extent to which what he has said has been either
7 corroborated or contradicted by testimony of other wit-
8 nesses or by exhibits or stipulations.

9 In ordinary life when you need to determine
10 the truthfulness of a person you ask yourself, don't
11 you, as you would here, how did he impress me? Did his
12 version appear straightforward and candid? Or, did he
13 seem to be trying to hide some of the facts? Did he
14 have any motive to testify falsely? Or, know a motive
15 of that kind?

16 The ultimate question for you to decide on
17 in passing on the credibility of any witness is, did he
18 tell the truth before me? It is for jurors alone to
19 determine the weight to be given the testimony of a wit-
20 ness, and in making these suggestions I have to you, I
21 have given you guidelines only and have not attempted
22 to dictate or suggest how you should apply those guide-
23 lines.

24 If you find that any witness has wilfully
25 testified falsely as to any material or significant matter,

not some matter which you believe to be unimportant, you may reject the entire testimony of the witness, or you may accept such portion of it as you believe, and reject the remainder.

Now, a few rules that apply particularly to this case. In judging the credibility of a witness you are entitled to consider his status and his interest, if any, in the outcome of the case.

In this trial the witnesses, other than Dr. Shapiro, Mr. Chea's sister, and Mrs. Moy have been government employees.

A witness' testimony is, of course, not to be given any greater or any less weight simply because the witness is either a government witness or a government employee.

While you may not assume that a government agent or chemist necessarily has an interest in the outcome of the case, his status is a fact among others which you may consider in determining how convincing you find his testimony to be.

Similarly, if you found that Dr. Shapiro or Mr. Chea's sister had an interest in the outcome of this case, you may bear that in mind in weighing the value of his or her testimony.

1 mjlw 11

2 One point as to Agent Maher's testimony. He
3 was permitted by the Court to remain in the courtroom
4 while other witnesses testified. There were good reasons
5 for allowing him to do so. However, in judging his testi-
6 mony you may consider this fact and give it as much or
7 as little weight as you believe it deserves.

8 As to the testimony of the expert witnesses,
9 a few special words are in order. Expert witnesses have
10 testified in this case as you know. In determining what
11 weight you should give to their opinions you may consider
12 their experience, their educational background, their
13 understanding of scientific discipline and the knowledge
14 that they have gained from professional activity and
15 study.

16 You should consider each expert opinion received
17 in evidence in this case and give it such weight as you
18 think it deserves, accepting it in whole or in part, or
19 rejecting it as you see fit if you conclude that the
20 reasons given in support of that opinion are not sound.

21 An expert witness, as I think I instructed you
22 during the course of the trial, may give his opinion,
23 and it is normally, as it has been in this case, based
24 on assumptions as stated by him.

25 If you find that the assumptions needed to support

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mjlw 12

the opinion are not good, you may disregard the opinion.

Now, the government has introduced in this case certain admissions, or statements of Mr. Lai. Admissions of a defendant are regarded as very strong proof in the law. Accordingly you are entitled to give great weight to the defendant Lai's admissions in this case.

However, among the issues of fact to be decided by you is the issue of whether the statements given by Mr. Lai were given knowingly, and it is the job, or responsibility of the government to satisfy you beyond a reasonable doubt that such statements were knowingly made, and if you find that they were not knowingly made you must disregard those statements.

Now, a statement is knowingly made if it is made voluntarily and intentionally, and not because of pressure or coercion.

In determining whether any statement made by Mr. Lai was knowing, you should take into consideration all of the evidence surrounding the making of the statement including whether in your view it has been established beyond a reasonable doubt that Mr. Lai was properly advised of his rights before he made the statements which he acknowledged he did.

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Now, ladies and gentlemen, as I have said your determination in this case must be made upon the evidence. There are generally speaking two types of evidence, or two definitions are least, or categories of evidence from which you may properly find the facts of the case. I am sure you have heard them referred to often. One is called direct evidence. That is the evidence of an eyewitness, or an earwitness. I have heard it, I have seen it directly. The other is indirect, or more generally called circumstantial evidence. Circumstantial evidence is defined as the proof of a chain of events or circumstances which points to the existence or non-existence of certain facts as to which there was no eyewitness or earwitness.

The law makes no distinction as to the importance or weight of circumstantial or direct evidence just because it is either circumstantial on the one hand or direct on the other. It requires only that you the jury find the facts in accordance with all the evidence in the case, both direct and circumstantial, beyond a reasonable doubt.

An example by the way, of the difference between direct and circumstantial evidence would be the following, an example which is given to juries time after time, which is a pretty vivid one, I think, and, therefore, I

1 mjw 14

2 will use it too:

3 If you look out of the window, not today, but
4 on a different day, and see it is raining, that is direct
5 evidence that it is raining. On the other hand, if all
6 the blinds were drawn in this room, which Mr. Rosenthal
7 pointed out is below sea level anyway, and somebody came
8 through the door overthere with a dripping umbrella, that
9 would be pretty good circumstantial evidence that it was
10 raining outside. You wouldn't have seen with your own
11 eyes, but you would have the right to infer seeing a man
12 coming through the door with a dripping umbrella that it
13 was raining outside. To be sure, he might have been
14 standing in a shower in one of the rooms in this building
15 that has a shower, but that is highly unlikely, and the
16 other inference is the likely one.

17 Now, ladies and gentlemen, that example is given
18 to you to help you in making the inferences that you will
19 have to make based on the circumstantial evidence in this
20 case.

21 Ladies and gentlemen, both the United States
22 attorney and defense counsel have from time to time through-
23 out the course of the trial, although comparatively rarely
24 I must say, objected in this case to the introduction of
25 evidence and addressed arguments to the bench. It is

1 mjw 15

2 the duty of attorneys on each side of this case to make
3 such objections when the attorney believes that the other
4 side is proposing to put into evidence or ask questions
5 about something that is not properly admissible.

6 I want you to know that when I have sustained
7 an objection to a question, or when I have overruled an
8 objection to a question, that doesn't indicate in any
9 way any attitude of mind toward the merits or outcome of
10 this case, or how you should decide it.

11 What it means and the only thing it means, is
12 that when I have sustained an objection you are to dis-
13 regard the question and draw no inference from the word-
14 ing of the question as to what a witness might have
15 answered had I allowed him to do so.

16 Now, ladies and gentlemen, that I have instructed
17 you as to the manner in which you should consider the
18 evidence, and since you have heard a very long summary of
19 the respective contentions of defense counsel and Mr.
20 Bannigan on the part of the government, I will turn to
21 the substance of the charges against the defendants here.

22 The indictment in this case contains six counts.
23 Each count is a separate crime and charge, and each of
24 them must be considered separately by the jury as to each
25 defendant who is named in that count.

1 mjw 16

2 Each of the defendants is not named in every
3 count, but in fact Mr. Chung, Lan Man Chung, is now only
4 named in one count, Count 5.

5 Mr. Chea is named in Counts 1, 2 and 4, and
6 Mr. Lai in Counts 1, 2, 3 and 6.

7 This is as good a time as any for me to tell
8 you that to assist you when you do make your decisions
9 one way or the other, I have prepared what are known
10 as verdict lists, one for each defendant so that when
11 you have reached a conclusion, Mr. Foreman, you can simply
12 fill in a blank of not guilty or guilty as to that charge
13 for that defendant.

14 As you will recall, the indictment names four
15 defendants in all, Mr. Lai, Mr. Chea, Mr. Lan Man Chung
16 and Mrs. Lai. Mrs. Lai is no longer on trial for reasons
17 that have nothing to do with the charges against or the
18 defenses for the present defendants. So the only persons
19 on trial before you now are the three with whom you have
20 become acquainted. Although, as I will explain to you
21 shortly, in considering their guilt or innocence you
22 may have to determine the nature of the participation,
23 if any, of others.

24 In the determination of innocence or guilt
25 on all the charges you must bear in mind that guilt is

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2 personal. The guilt or innocence of a defendant on trial
3 before you must be determined separately with respect to
4 him solely on the evidence presented against him or the
5 lack of evidence against him.

6 The case of the defendants stands or falls on
7 the proof or lack of proof of the charges against him,
8 and not against somebody else. Therefore, the fact that
9 another person named in the indictment is not on trial
10 before you is not evidence of the guilt of any other
11 defendant or that the crimes charged were committed. It
12 may not be considered by you in any respect against the
13 defendants. Nor may any adverse inference be drawn against
14 these defendants by reason of that fact.

15 The guilt or innocence of the defendants on
16 trial must be determined by you beyond a reasonable doubt
17 solely on the evidence against them and not someone else.

18 Now, having got that important generality, but
19 it is a generality, out of the way, let me come to the
20 charges against the defendants.

21 The first count of the indictment, the so-called
22 conspiracy charge which applies now only to Mr. Lai and
23 Mr. Chea, charges that from on or about the 1st of July,
24 1972, up to and including the date of the filing of the
25 indictment here, which was about September 28th, 1973,

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that is a couple of months ago, Mr. Lai, Mrs. Lai and Mr. Lan Man Chung, and also Mr. Chong Wing Chung, who has been identified separately as Mr. Sang, I believe, who is named as a co-conspirator, not as a defendant, and others who are not known to the grand jury, conspired together to violate the Federal Narcotics Laws.

It is further charged that it was part of the conspiracy, that is the object of the conspiracy, to distribute and possess with intention to distribute what we lawyers in a fancy way call schedule 1 and 2 narcotic drug controlled substances. These substances about which I will explain more at a later point during these instructions include heroin.

For ease of understanding I will hereafter refer to this count as the conspiracy charge.

The second through sixth counts inclusive charge that on or about the date specified in each charge the defendant named in those charges or counts unlawfully, intentionally and knowingly distributed or possessed with intent to distribute, heroin, schedule 1 narcotic drug controlled substances to wit, heroin.

Before considering the legal principles with respect to each of these charges keep in mind, as I told you, that each charge is separate and distinct from the

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2 others.

3 Now let us turn to the first charge, the con-
4 spiracy charge.

5 Before you may convict either Mr. Chea or
6 Mr. Lai under the conspiracy charge you must find
7 that the government has proven beyond a reasonable doubt
8 all of the following elements: First, you must find the
9 existence of the conspiracy charged. Obviously nobody
10 can be guilty of a conspiracy unless there was a con-
11 spiracy as charged in the indictment. Secondly, you
12 must find that the defendant whose guilt or innocence
13 you are considering at that time knowingly and wilfully
14 associated himself with the conspiracy, or joined it;
15 third, you must find that at least one of the conspirators
16 committed at least one of the so-called overt acts about
17 which we heard yesterday and which I will tell you more
18 about shortly, that are specified in the indictment.

19 If the government fails to establish each of
20 these essential elements, or all of those essential elements,
21 beyond a reasonable doubt, then you must acquit the defend-
22 ant whose guilt or innocence you are considering on that
23 point.

24 If it succeeds in proving all of those things,
25 however, then of course it is your duty to convict that

defendant.

Now, the gist of the crime of conspiracy is the unlawful agreement to violate the law. Whether or not the defendant accomplished what it is alleged he and the others conspired to do is immaterial to the question of his guilt or innocence, if a conspiracy does not come to fruition. It is the very conspiracy itself together with at least the commission of one overt act that completes the crime.

A conspiracy has often been called a partnership in criminal purpose in which each member becomes the agent of every other member.

To establish the existence of a conspiracy the government is not required to show that two or more persons have sat around a table and entered into a solemn compact orally or in writing stating that they have formed a conspiracy to violate the law and setting forth the details of their plans. Indeed it would be extraordinary, obviously, if there were such a formal document or specific oral agreement.

Your common sense will tell you that when a man in fact undertakes to enter into a criminal conspiracy, which by definition means an agreement to violate the law, they are not going to announce it from the house-

1 mjw 21.

2 tops. And much is left to the understanding.

3 Conspirators don't usually reduce their agree-
4 ments to writing or swear to them before a Notary Public.

5 It is sufficient if the government establishes
6 to your satisfaction beyond a reasonable doubt that two
7 or more persons in any manner through any contrivance,
8 impliedly or tacitly or explicitly come to a common under-
9 standing to violate the law. Express language or specific
10 words are not required to indicate assent or attachment
11 to a conspiracy. Nor is it required that you find that
12 all of the conspirators alleged in the indictment joined
13 in the conspiracy in order to find that the conspiracy
14 existed, but obviously you must find that at least two
15 people did, or you can't have a conspiracy.

16 In determining whether there has been an unlaw-
17 ful agreement you may judge the acts and conduct of the
18 alleged co-conspirators which are done to carry out an
19 apparent criminal purpose. The maxim that action speaks
20 louder than words is applicable here.

21 Often the only evidence available is that of
22 disconnected acts which, however, when taken together in
23 connection with each other show a conspiracy to secure
24 a particular result as satisfactorily and conclusively
25 as more direct proof.

The offense is complete when the unlawful agreement is made, and any single overt act to effect the object of the conspiracy is thereafter committed by at least one of the co-conspirators.

Proof concerning the accomplishment of the objects of conspiracy may be the most persuasive evidence of the existence of the conspiracy itself. If you believe that this alleged venture was successful, that may be the best proof of the existence of the agreement.

In determining whether the conspiracy charged here actually existed you may consider the evidence of the acts and conduct of the alleged conspirators as a whole, and the reasonable inferences to be drawn from such evidence. If upon consideration of the evidence you find beyond a reasonable doubt that the minds of at least two of the alleged conspirators met in an understanding way and that they agreed, as I have explained a conspiratorial agreement to you, to work together in furtherance of the unlawful scheme alleged in the indictment, then proof of the existence of the conspiracy is complete. That is the first element.

Now, you must find that at least two of the alleged conspirators agreed to distribute heroin, or

1 mjw 23

2 possess it for distribution. It would make no difference,
3 however, if what they actually distributed or possessed
4 for distribution was not in fact heroin on the first
5 count, as long as you find beyond a reasonable doubt
6 that the conspiracy agreed and planned to distribute
7 heroin or possess it for distribution.

8 As to the substantive counts to which I am
9 coming, it makes all the difference whether they actually
10 distributed heroin or not, but as to the first count you
11 are not required to find that they actually did distribute
12 heroin, so long as you do find that they actually agreed
13 to distribute or possess for distribution heroin.

14 I am still talking about conspiracy now, and
15 I am about to tell you about the second element which
16 is required to be proven in order to find a conviction.
17 That is, membership in the conspiracy, individual member-
18 ship in the conspiracy.

19 If you do conclude that a conspiracy as charged
20 did exist, you must next determine whether the defendant
21 whose guilt you are considering, that is either Mr. Lai
22 or Mr. Chea, as the case will be, was a member or became
23 a member, whether he participated in the conspiracy with
24 knowledge of its unlawful purposes and in furtherance of
25 its unlawful objectives.

1
2 To find a defendant's membership in a conspiracy
3 you must find that he knowingly and intentionally par-
4 ticipated in it. Thus mere knowledge by defendant of
5 the existence of the conspiracy or of any illegal act
6 on the part of another alleged co-conspirator, or mere
7 association with one or more of the conspirators, is not
8 sufficient to establish membership in the conspiracy.

9 The government must establish beyond a reasonable
10 doubt that the defendant under question was aware of the
11 basic purposes and objects of the conspiracy, that he
12 entered into it with a specific criminal intent, that
13 is, with a purpose to violate the law.

14 So if a defendant with an understanding of the
15 unlawful character of the conspiracy intentionally en-
16 gages, advises or assists for the purpose of furthering
17 the illegal undertaking, then he becomes a knowing and
18 wilful participant, a conspirator.

19 In determining whether a defendant was a member
20 of a conspiracy you may consider, of course, all of the
21 evidence before you.

22 Now, the guilt of a conspirator, if you found
23 that there was a conspiracy and he joined it, is not
24 governed by the extent or duration of his participation
25 in the conspiracy, or whether he had knowledge of all of

1 njw 25

2 its operations. Even if one joined the conspiracy after
3 it was formed and was engaged in it to a degree more
4 limited than that of some other co-conspirator, he may
5 still be found guilty of conspiracy.

6 Each member of the conspiracy may perform, and
7 usually does, separate and distinct acts at different
8 times and different places. Some conspirators obviously
9 play more important roles than others. But it is not
10 required for the proof of the elements we have been
11 talking about that a person be a member of the conspiracy
12 from its very start. He may join it at any point during
13 its progress and he would then be held responsible for
14 all that has been done before he joined and all that would
15 be done by the conspirators in pursuance of the conspiracy
16 thereafter, during its existence and while he remains a
17 member.

18 Simply stated, again using the partnership
19 analogy, a partner assumes the liability of the partner-
20 ship, including those that occurred before he became a
21 member. Thus if you find that a given defendant is a
22 conspirator, that is, became a member of it knowingly,
23 then however limited his role in further the objectives
24 of the conspiracy he is responsible for all that was done
25 in furtherance thereof before or during the continuance

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of the conspiracy while he is a member.

Now we come to the last element with regard to conspiracy, and that is the question of overt acts. Assuming that you have found that a conspiracy existed and that a defendant whom you are considering was a member of that conspiracy, or became a member of it knowingly, then the question arises whether any of the co-conspirators committed at least one overt act in furtherance of the conspiracy.

The purpose of requiring proof of an overt act is not inconsequential. It is that while parties might conspire and agree to violate the law, they could, and they do, change their minds and do nothing to carry it out. In that case no crime would be committed. You and I can sit here and plan to blow up the capitol of the United States and talk about it for days on end, but if we never do anything about it, that is not a crime.

The moment, however, that one of the co-conspirators does something in furtherance of the crime, then the crime is complete.

Now, it is true, as was indicated yesterday, that overt acts as listed in this indictment generally speaking are not necessarily criminal in themselves. That does not mean, however, of course, that an action taken

1 mjw 27

2 may not be sufficiently weighty to be in furtherance of
3 the crime.

4 If I phone you in connection with our plan to
5 blow up the capitol of the United States and suggest
6 that we meet at a certain time and place, while it may
7 be perfectly normal to telephone people, that would be
8 an act in furtherance of the conspiracy.

9 An over act need not be a criminal act, nor
10 the very crime which is the subject of the conspiracy.
11 It is not necessary to the government to prove that each
12 member of the conspiracy committed or participated in any
13 particular over act since the act of anyone done in fur-
14 therance of the conspiracy becomes the act of all the
15 other members.

16 Also the government is not required to prove
17 each of the overt acts alleged in the indictment. It
18 is sufficient if it proves the commission of at least
19 one of the acts by one of the conspirators in the Southern
20 District of New York, which includes this city.

21 Now, the five overt acts here I will read to
22 you so that you will be acquainted with them in case
23 you have any difficulty interpreting. if that is the
24 right word to use, the indictment when you have it in
25 your possession.

1 mjw 28

2 They are that first on or about July 11, 1973,
3 Mr. and Mrs. Lai entered The National Bank of North
4 America at 44 Wall Street, New York; second, that Mr. Lai
5 met Mr. Chea in the vicinity of 177 Chrystie Street, New
6 York, New York on July 11, the same day; third, that on
7 or about July 11, the same day, Mr. Lai, Mrs. Lai and
8 Mr. Chea entered 261 Broome Street, New York, New York;
9 fourth, that on the same day Lan Man Chung, also known
10 as Ja B. Lam, entered 261 Broome Street and; fifth and
11 final, that Mr. Chung, also known as Ja B. Lam, entered
12 261 Broome Street, New York, New York, on July 11, 1973.

13 Now, while this indictment charges that the
14 conspiracy existed from on or about the 1st day of July
15 and continuously thereafter up to and including September
16 28, 1973, which is the date of the indictment, it is not
17 essential as a matter of law that the government prove
18 that the conspiracy started and ended precisely on those
19 dates. It is sufficient if you find that in fact a con-
20 spiracy was formed and existed for some time within the
21 period set forth in the indictment, and that at least one
22 of the overt acts was committed in furtherance of the
23 conspiracy within that period.

24 A conspiracy once formed is presumed to have
25 continued until its object is accomplished, or until there

is an affirmative act of termination by its members, or it is otherwise clearly terminated, as for example, by arrest of the defendants here.

So, too, once a person is found to be a member of a conspiracy, he is presumed to continue his membership until the termination of the conspiracy, unless there is affirmative proof of his withdrawal or his disassociation from it.

Now, ladies and gentlemen, I have finished instructing you with regard to conspiracy. We come now to the law with regard to the other counts.

The second through sixth counts of the indictment, that is the substantive, as we call them, counts, charged the defendants with the unlawful distribution, or possession with intent to distribute, varying amounts of heroin as more specifically set forth in each count.

The statute which the defendants named in the substantive narcotics count are alleged to have violated, is Section 841(a)1 of the United States Code. The text is set forth here. I will read it briefly, although I think by now you have heard enough about this. That section reads, in pertinent part, as follows:

"It shall be unlawful for any person knowingly or intentionally to distribute, or possess with intent to

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2 distribute, a controlled substance."

3 Before you can find a defendant guilty on any
4 of those counts, 2 through 6, you must be convinced that
5 the government has proved beyond a reasonable doubt all
6 of the following elements of the crime: First, that on
7 or about the date alleged in the particular count the
8 defendant under consideration at that time either distributed
9 or possessed with intent to distribute a narcotic drug
10 controlled substance;

11 Second, that the substance distributed or
12 possessed with intent to distribute, as set forth in
13 that count, was in fact a schedule 1 narcotic drug con-
14 trolled substance, namely, heroin;

15 Third, that the defendant under consideration
16 did what he did unlawfully, wilfully and knowingly.

17 You will note that the first element of the
18 offense is to distribute or possess with intent to dis-
19 tribute the drug. What does that phrase mean? Well, the
20 word "distribute" means, as you would expect it to, to
21 transfer or deliver, other than by administering or dis-
22 pensing, the narcotic controlled substance. It is not
23 necessary that the government prove that the defendant
24 actually distributed the narcotic drug controlled sub-
25 stance, only that he either distributed it or that he

1 mjw 31

2 possessed it with the intention to distribute it, on or
3 about the date charged.

4 Now, the law recognizes two kinds of possession,
5 and I think probably we do in our daily lives, too, although
6 we are not so conscious of it.

7 First is actual possession. I have just got
8 this piece of paper in my hand. I possess it. A person
9 who knowingly has direct physical control over a thing
10 at a given time is then in actual possession of it. But
11 a person who, although not in actual possession, knowingly
12 has the power, the power at a given time to exercise
13 dominion or control over a thing is then in what the law
14 calls constructive possession of it.

15 The law recognizes also the possession may be
16 sole or joint. That is, a thing may be possessed by
17 one person or by more than one person. If one person
18 alone has actual or constructive possession of a thing,
19 possession is sole.

20 If you find from the evidence beyond a reasonable
21 doubt that any of the accused, either alone or jointly
22 with others had actual or constructive possession of the
23 substances described in the count under consideration,
24 then you may find that such substance was in the possess-
25 ion of the accused within the meaning of the word possess-

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ion as used in these instructions and used in the law.

The word "intent", that is "with intent to distribute", refers to a person's state of mind, of course.

So the term "distribute" or "possess with intent to distribute" can be fairly stated to mean to possess or to control an item with the state of mind or purpose of transferring or delivering that item.

The second element you must find beyond reasonable doubt with regard to Counts 2 through 6, if there is to be a conviction of any defendant, is that the alleged narcotic drug controlled substance which the defendant possessed with intent to distribute was heroin. I instruct you as a matter of law that heroin is a schedule 1 narcotic drug controlled substance.

You, however, must still find beyond a reasonable doubt that the substance which either of the defendants, any of the defendants here possessed or distributed was heroin.

The third element, and I will say more about that hereafter, the third element which you must find with regard to the Counts 2 through 6 if you are to convict any defendant is that their act was taken unlawfully, wilfully, knowingly or intentionally.

Those words means that you must be satisfied

beyond a reasonable doubt that the defendant whose guilt you are considering knew what he was doing, and he did it deliberately and voluntarily as opposed to mistakenly or accidentally, under a mistake, or under a mistaken assumption.

For example, Mr. Fisher argues that there is no proof here that Mr. Ja B. Lam knew what were the contents of the package which it is claimed that he had in his possession that day. If you believe that Mr. Ja B. Lam did not know what was in that package, you would be required to acquit because in order to find any of the defendants guilty on the so-called substantive counts, or on the conspiracy count, you must determine beyond a reasonable doubt in your mind that that defendant knew what he was doing and intended to do it.

Knowledge and intent exist in the mind. It is not possible to look into a person's mind to see what goes on. Accordingly, the only way you have for arriving at a decision in these questions is to take into consideration as you do all the time in your daily lives the facts and circumstances shown by the evidence, including the exhibits, and to determine from all such facts and circumstances whether the requisite knowledge and intent were proven to

1 mjlw 34

2 you beyond a reasonable doubt.

3 Direct proof is unnecessary. The only way you
4 could get direct proof of a person's intention is for
5 him to have said, or somebody else to have testified
6 that he said, I meant to do that. Of course that rarely
7 occurs in any case. But knowledge and intent may be
8 inferred from all of the surrounding circumstances.

9 Now there is an alternate basis on which find-
10 ing of guilt may be found. But it still requires proof
11 of a high degree which I will now describe to you.

12 Any person who commits an act in violation of
13 a criminal statute, of course, commits a crime. But it
14 is also a crime not only to commit an illegal act, but
15 to aid or abet another person to commit that act. The
16 second crime, if you want to call it a separate crime,
17 or second basis for being held liable for crime, is the
18 legal principle that anyone who aids or abets another
19 to commit an illegal act is himself guilty of committing
20 that act.

21 Accordingly, if you should find beyond a
22 reasonable doubt that any of the defendants named in
23 Counts 2 through 6, or any of their co-conspirators,
24 committed a crime, and that another defendant aided or
25 abetted that defendant or co-conspirator, you would have

1 mjw 35

2 a sufficient basis for finding the guilt of the second.

3 Now, what does this mean? To find that a
4 defendant aided or abetted another to commit a crime
5 you must find that the aiding and abetting defendant in
6 some positive clear way associated himself with the
7 criminal venture, that he participated in it not just
8 casually, but as something he clearly wished to bring
9 about.

10 In other words, he sought by his action to make
11 the venture succeed. Thus to find a defendant guilty
12 of aiding and abetting you must of course find something
13 more than mere knowledge on his part that a crime was
14 being committed. For a mere spectator at a crime is not
15 a participant. But, in order to convict it is not necess-
16 ary that you find that a defendant himself did all the
17 acts.

18 Now you very well recall that the second element
19 of the crime charged here is that the substance distributed,
20 or possessed with intent to distribute, as set forth in
21 Counts 2 through 6 of the indictment, was a so-called
22 schedule 1 narcotic drug controlled substance. I have
23 told you that heroin is such a substance. However, the
24 defendants have vigorously contested, as you of course
25 know, whether the substances introduced in evidence are

1 mjw 36

2 in fact heroin.

3 In order to convict any defendant on the sub-
4 stantive counts, that is Counts 2 through 6, I want to
5 make it clear that you must find beyond a reasonable
6 doubt that the substance referred to in that particular
7 count is heroin. It is not sufficient as to those
8 counts that the defendant and others acted as through they
9 believed the substance was heroin. You remember I told
10 you that it was sufficient if under the conspiracy counts
11 the defendants planned or agreed to distribute heroin
12 even if it turned out that they did not distribute that.

13 But, as to these substantive counts it is not
14 sufficient if they acted as though they believed the
15 substance was heroin. Nor is a suspicion on your part
16 that the substance was heroin, a suspicion that it was
17 heroin, sufficient to find the defendants guilty.

18 You may not speculate as to the identity of the
19 substance. If you have a reasonable doubt that the sub-
20 stance was or was not, whichever way you look at it,
21 diacytal morphine, that is heroin, then you must find
22 the defendant not guilty on the count involved.

23 Now we come to another subject which applies to
24 the case of Mr. Chea. The defendant Juan Pang Chea, as
25 you heard yesterday, asserts a defense to the charge that

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2 he was the victim of entrapment by an agent of the govern-
3 ment. The word "entrapment" is a legal term and it perhaps
4 is somewhat different than the normal lay attitude, but
5 it incorporates an awful lot of common experience and
6 sense, and sense of fairness and propriety, it seems to
7 me. It has a technical meaning however, and I want to
8 go into that.

9 Criminal activity is sometimes such that stealth
10 and strategy are necessary methods to be used, or at
11 least approvable methods to be used by law enforcement
12 officers. The function of law enforcement is not only
13 the prevention of crime, but also the detection and the
14 apprehension of criminals.

15 The defense of entrapment is based upon the
16 policy that law enforcement agencies should not manu-
17 facture crime, or corrupt persons, or tempt persons to
18 commit crimes in order to prosecute and convict them.

19 But, a line must be drawn, and this is the
20 line you would expect ought to be drawn, between cor-
21 rupting a willing criminal on the one hand and corrupting
22 the unwilling person and laying a trap for him on the
23 other side.

24 Law enforcement agents often use undercover
25 investigations and informants in enforcing the law. Such

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2 methods are not forbidden by law. But a basic feature
3 of the entrapment concept is that the idea, or design
4 of committing crimes originated with the law enforcement
5 officer rather than with the defendant, and that the
6 defendant had no previous disposition, intent or purpose
7 of committing the alleged offense. And that the law
8 enforcement officer, or government employee, implanted
9 in the mind of the defendant the disposition to commit
10 the alleged offense.

11 If you find that an agent or employee of the
12 government merely afforded a favorable opportunity to a
13 defendant who was already willing, ready and able to
14 commit a crime, that conduct on the part of the govern-
15 ment would not constitute a defense of entrapment for
16 the defendant.

17 The test that you should apply is this: If
18 you find in the first instance some believable or credible
19 evidence that a government agent by initiating the illegal
20 conduct, himself induced Juan Pang Chea to transfer the
21 narcotics on the occasions charged in this indictment,
22 then and only then the government must prove beyond a
23 reasonable doubt that such inducement did not even so
24 the cause or creator of the crime.

25 That is, the government must prove that without

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such inducement Chea was already ready and willing to commit the crime.

Do you understand that, ladies and gentlemen? I know sometimes this charge causes problems for the jurors, and I want to be sure that they understand.

If the prosecution has satisfied you beyond a reasonable doubt that the defendant Chea was ready and willing to commit the offense as charged, and was waiting a favorable opportunity to do so, then you may find even if there was an inducement which brought about the actual events, that that inducement was no more than providing of what appeared to the defendant to be a favorable or convenient opening or opportunity to commit the crime, and in such circumstances you may find that the government's agent has only provided a means for a defendant to realize his own then existing purpose.

If the government proves that to your satisfaction beyond a reasonable doubt, then the defense fails.

To sustain, or assume its burden, the government makes three basic points and I am now telling you what their contentions are, I am not sponsoring them, I am bringing them to your attention, and I am not dis-sponsoring them, either, I am simply bringing them to your attention.

1
2 First, the government contends that Juan Pang
3 Chea had a plan or design to sell drugs prior to any
4 contact with the agent. In this regard the government
5 contends that Juan Pang Chea's ready access to large
6 scale sources of supply of heroin shows an already formed
7 design to sell drugs.

8 Second, the government contends that the evi-
9 dence shows that Juan Pang Chea was in no way reluctant
10 to sell drugs, but responded readily and willingly to
11 the opportunity presented to him.

12 In this regard the government points to Juan
13 Pang Chea's ready willingness to discuss the sale of
14 large quantities of heroin at his first meetings with
15 Agent Quarequoio and Agent Tripp.

16 Finally, the government contends that Juan Pang
17 Chea sold approximately one pound of heroin to Lan Man
18 Chung, that is also Ja B. Lam, on July 11, 1973, and that
19 he said, on June 14, 1973, that Lam had asked to become
20 his partner in the heroin business, and that these facts,
21 if you believe them to be true beyond a reasonable doubt,
22 circumstantially show that Chea was in the heroin busi-
23 ness and was willing to sell drugs whenever the opportun-
24 ity to do so presented itself without participation by
25 the government.

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2 Now, Juan Pang Chea, on the other hand, contends
3 that the government has failed to sustain its burden that
4 he was ready and willing to commit the crime charged
5 without persuasion. He argues that there is no proof
6 that he had a plan or design to sell drugs prior to any
7 contact with an informer, and aside from what he told
8 the agents there is no proof that he ever engaged in
9 this type of activity before April 30, 1973.

10 He further argues that the tape recording made
11 of the June 29th meeting, I believe between himself and
12 Agent Quarequio, indicates clearly Chea's hesitance to
13 sell the drugs, and that it was necessary for Agent
14 Quarequio to put forth a lot of effort to persuade him
15 to go through with the deal, despite all his brave talk
16 that preceded that.

17 As I told you, I didn't sponsor the govern-
18 ment's contentions, I don't sponsor Mr. Chea's contentions,
19 but I bring them to your attention.

20 Ladies and gentlemen, in every criminal case
21 there is a fundamental rule which every defendant has
22 the right to rely on. That is the rule that no defendant
23 is compelled to take the witness stand or offer any
24 testimony whatsoever.

25 Pleading not guilty a defendant has in effect

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1 denied the charges on which he is being tried and denied
2 every material issue against him stated in the indictment.
3 It is the prosecution which must prove him guilty and he
4 can't be required to testify or disprove anything.
5

6 Any accused person has the right to stand mute.
7 The fact that he does not take the stand, as the defend-
8 ants in this case have not, may not be considered by you
9 as any indication of guilt or as an admission of guilt
10 or as evidence or inference of guilt.

11 Now, that is not just an artificial rule. If
12 you were accused of a crime you would feel that there was
13 no reason for you to prove your innocence. However thorough-
14 ly you are convinced of that innocence, or knew of it,
15 you would understand that it was the government's job
16 to prove you guilty, if it could.

17 Now, ladies and gentlemen, under your oath
18 as jurors you cannot allow a consideration of the punish-
19 ment which might be imposed upon a defendant if convicted
20 to influence your verdict in any way or to enter into your
21 deliberations at all.

22 Let me say, ladies and gentlemen, that I rarely
23 talk about this subject when I charge a jury because
24 I don't think it is a subject that should enter into the
25 jury's mind at all. I must talk about it frankly in this

1 case because with perfect propriety on both sides it
2 has been brought into evidence in relation to what
3 was told to Mr. Lai at the time that he was arrested,
4 namely that he and his wife theoretically could be subject
5 to 30 years imprisonment if they were convicted here.
6

7 We have different jobs, you and I, ladies
8 and gentlemen, as I explained yesterday, in carrying out
9 our responsibilities in this case. Your job is to deter-
10 mine, make findings of fact, and apply the law here and
11 determine, but only determine whether the defendants here
12 are guilty or they are not guilty. I have no desire
13 whatsoever to influence you in the making of that decision.
14 I believe thoroughly in the integrity of the jury system
15 in making such determinations. But I have an equal
16 responsibility with which you have no right to interfere
17 and which you have no right to consider in making your
18 decision.

19 I expect you to carry out your job as you
20 should, and if it ever becomes necessary for me to do so,
21 I will carry out mine.

22 Ladies and gentlemen, I have come very near
23 the end of my formal instructions. The most important
24 part of this case is the part which you now as jurors
25 are to play, because it is for you and your alone to

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2 decide whether any of these defendants is guilty on any
3 count charged.

4 I know that you will try the issues that have
5 been presented to you in accordance with the oath that
6 you took as jurors in which you promised that you would
7 well and truly try the issues joined in this case.

8 I like that phrase, it goes back one thousand
9 years, and its old fashioned flavor should mean something
10 to you and remind you of the hundreds of thousands of
11 juries who have performed this function before you, and
12 that you must a true verdict render based upon the
13 evidence you heard in this court, and the exhibits.

14 In order for you to reach a verdict of either
15 not guilty or guilty or guilty on any count, on any defend-
16 ant, your verdict must, of course, be unanimous. That is,
17 everybody must agree as to that particular verdict.

18 Now, inspite of that requirement of unanimity,
19 each of you must decide each count as to each defendant
20 individually in accordancne with your own conscience.
21 But only after deliberation with your fellow jurors to
22 determine whether you believe a just verdict is being
23 reached.

24 You shouldn't hesitate to change your mind if
25 you become convinced that your original view of the case

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was not in accordance with the facts and the law.

On the other hand, you shouldn't change your mind just for the purpose of reaching a verdict as a matter of convenience. I haven't any reason to believe that this jury won't be able to reach a unanimous verdict one way or the other as to the matters put before them.

Nothing that I have said in these instructions, whatever it may be, is intended to indicate any view of mine towards how the various issues put before you should be decided.

Ladies and gentlemen, in accordance with custom, Juror No. 1, Mr. Weiner, will act as your foreman. If you have any questions or wish to have any of the testimony read back to you, or wish to look at any of the exhibits, you may simply send a written note or message to that effect through the marshal who will have you in custody, who will be right outside your door, and he will make the necessary arrangements.

If you do wish to have any testimony read back to you, or any exhibit, it would be helpful if you could be as specific as possible about the material that you are interested in so that we can be assisted in locating that material.

I am neither encouraging nor discouraging your

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2 asking for such material, but I do want you to understand
3 that you are fully entitled to it. I do not intend, as
4 occasionally occurs, to send all the exhibits in to you
5 and plunk them down on the table. There are an awful
6 lot of exhibits here. The substances that are before
7 you you may or may not wish to have in your presence.
8 The large amounts of money, I think it would be foolish
9 for you to have in your presence. Just so there is no
10 confusion about it. But you certainly are free to examine
11 them to your heart's content if you wish to do so.

12 Now ladies and gentlemen, I have come to the
13 end of my instructions. I will meet for a moment with
14 the attorneys in the robing room to see if they think
15 that anything in my instructions needs clarification or
16 correction and we will be right back after we have spent
17 a moment or two together.

18 (In the robing room)

19 THE COURT: Mr. Pykett? Do you have any re-
20 quests or objections?

21 MR. PYKETT: Your Honor, there is only one
22 issue that I am not really sure needs correcting and
23 that was in the government's requests for participation
24 in the conspiracy. This is government's request number
25 8. You added the word "while he is a member."

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2 THE COURT: I did add those, and I think that
3 I correctly added them because we were talking about the
4 responsibility of a conspirator, and although he may have
5 joined only a day before and been responsible for any-
6 thing that was done prior to his joining, if he quits
7 the day after he can't be responsible for what follows,
8 and to avoid any suggestion that he could be responsible
9 for what happened after he left the conspiracy I added
10 those words.

11 MR. PYKETT: Thank you, sir.

12 THE COURT: Mr. Rosenthal?

13 MR. ROSENTHAL: Well, basically, your Honor,
14 I most respectfully accept and object, both to the read-
15 ing by you to the jury of overt acts 4 and 5 --

16 THE COURT: Why is that?

17 MR. ROSENTHAL: Well, Mr. Lam is no longer
18 charged with conspiracy.

19 THE COURT: But he is still charged as a co-
20 conspirator, as a matter of law, it seems to me. I don't
21 think it makes any difference whose name is there. If
22 you want me to tell the jury to disregard those, I don't
23 feel very strongly about it, and I am sure that you don't
24 think that the case is really going to turn on that, but
25 if you want me to I will.

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2 MR. FISHER: Your Honor, may I comment on that?
3 Most respectfully, I think in view of the Court's mis-
4 missing of Count 1 as against Lam that's a finding that
5 there is no proof that he is a co-conspirator because if
6 he were a co-conspirator you couldn't have dismissed.
7 So I think Mr. Rosenthal is quite correct here and --

8 THE COURT: I don't think that is necessarily
9 true. I don't know that I want to spend all day arguing
10 about it, because I think never having really given it
11 much thought, admittedly, that I could simply have deter-
12 mined as I did that the government hasn't proven its case
13 beyond a reasonable doubt. But, in any event, unless Mr.
14 Pykett has strong feelings about that, he may not know,
15 or -- you were here this morning while I mentioned it,
16 Mr. Pykett, that I have dismissed the conspiracy charge
17 against Mr. Lam and therefore I would be glad to instruct
18 the jury without arguing with you that they should dis-
19 regard it. They are there anyway visually.

20 MR. FISHER: I would suggest disregard any
21 comments about Lam with respect to the conspiracy count.

22 THE COURT: All right.

23 MR. FISHER: Thank you, your Honor.

24 MR. ROSENTHAL: I have nothing else.

25 MR. RASSNER: I have no exceptions, but I would

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2 suggest this, your Honor; I don't know that the defense
3 of entrapment was indicated to apply to the July 11th
4 and the conspiracy count as well as the June 29th count.
5 I believe that the proof does disclose that it could all
6 be part of one course of conduct, and I think that subject
7 made --

8 THE COURT: If that is part of your claim, I
9 will just -- I will state that you claim it applies to
10 all counts against you.

11 MR. RASSNER: Yes, I would appreciate that very
12 much, your Honor.

13 THE COURT. I didn't mean to confuse what you --

14 MR. ROSENTHAL: Unless it runs off on me.

15 MR. FISHER: If your Honor please, first I
16 respectfully except to the failure of the Court to charge
17 those requested charges which were submitted to your
18 Honor.

19 THE COURT: I assume there is an exception to
20 all --

21 MR. ROSENTHAL: I understood we did that yester-
22 day, your Honor, that's why I didn't bother doing it today.

23 MR. FISHER: If your Honor please, most respect-
24 fully I think we have been trying to illustrate the ques-
25 tion about the necessity for proof of knowledge. I really

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2 believe the Court was trying to help Mr. Lam get a fair
3 shake here by referring to that, and I don't mean to be
4 querulous, but the Court said, in substance if not directly,
5 "If you believe that Ja B. Lam did not know what he was
6 doing, then the government has not proved its case beyond
7 a reasonable doubt."

8 I think the Court should have stated, most
9 respectfully, that, if you believe that Lan Man Chung --
10 if you believe the government has not proven beyond
11 reasonable doubt that Lan Man Chung knew what was in the
12 bag was heroin, in other words, I think you kind of gave
13 us a little of the burden, and I am sure it can't --

14 THE COURT: Do you want me to say it again
15 the right way?

16 MR. FISHER: Yes, your Honor.

17 THE COURT: All right.

18 MR. FISHER: And finally, if your Honor please,
19 this is a problem, I think, when you started to discuss
20 aiding and abetting you introduced the subject by stating,
21 and now there is an alternate way you can find guilt
22 with the standard that I will now define to you, and
23 you never ever, so far as --and if I am wrong, please
24 correct me --

25 THE COURT: If I never, then I never ever.

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MR. FISHER: I don't believe the Court ever stated during the discussion of the aiding and abetting that they must find aiding and abetting beyond a reasonable doubt.

THE COURT: All right.

MR. FISHER: That's all I have.

(In open court)

THE COURT: A few points which counsel believe would clarify things, and I am happy to make this statement if it clarifies things.

Number one, and this is not just a matter of clarification, this is a matter of substance, I read to you all of the overt acts when I read you the overt acts.

In view of the fact that Count 1 in which the overt acts appear no longer applies to Mr. Lam I am instructing you that you are to disregard all references to him in that count, including overt act number 4 and 5.

Second, in case there was any doubt about it, it is Mr. Chea's contention, and as I told you before I don't sponsor anybody's contentions, that the defense of entrapment is available to him as to all of the charges here, and you must consider his case in that light. That is, you must consider he alleges that he has been entrapped

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with regard to all of the offenses charged against him.

Third, I talked to you about the necessity of the government's proving that a defendant knew what he was doing, and I may or may not have misstated in my example, but in order to make it certain that I stated correctly, I wish to advise you regarding Mr. Lam that if you believe that the government has not proven beyond a reasonable doubt that Mr. Lam knew what the contents of the bag were at the time that he was arrested, then he cannot be found guilty with regard to the substantive charges against him.

Finally, in case I didn't tell you, I want you to understand that although a person may be found guilty, if you find that they are an aider and abettor, under the terms previously described, it is, of course, necessary for the government to prove beyond a reasonable doubt that they are an aider and abettor, the standard is the same as to that as it is to anything else.

Now, ladies and gentlemen, that is it and I am about to have the marshals sworn so you can begin your deliberations.

It becomes my unhappy responsibility, however, now to excuse Mrs. McCarthy and Mr. Provenza. They have served loyally and faithfully, as you all have in this

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case, and I don't know that they are happy or not to be excused from the responsibilities of deliberation, but in any event the law prevents me from allowing the alternates to stay on once we have the 12 regular jurors safely in harbor after the case has been tried and they have been instructed.

So, you are excused at this time with the great thanks of the Court, and I am sure of the lawyers, defendants, government and will you please go to Room 109 to complete the formalities for your service, and I guess to be sure that you will be paid sooner or later.

Thank you very much.

(Two alternate jurors excused)

THE COURT: I want to give out now to Mr. Weiner the original of each of these verdict lists, of which there are three. I will ask the marshals to stand so they can be sworn.

(Two marshals sworn by the clerk)

THE COURT: Ladies and gentlemen, one last word. There are two ways we can arrange for your lunch. One is for you to go out, and the other is to bring the lunch in. I am going to be rather arbitrary, if you don't mind, and arrange for the lunch to be brought in because it takes a fair amount of time to serve a group

as large as yours and I think it would really cut into the day.

I am not suggesting that you should deliberate over every mouthful or anything else. You decide yourselves how you want to handle that. But, in any event, I think it will save time for you, and I hope that is what you want.

For that reason, I will, or, in that connection, I will ask the marshal as soon as you can to pass around a menu which has some choices on it and for you to indicate what sandwiches or other food you would like to have brought in and we will try to make it as comfortable as possible.

One other things. I was told yesterday the jury room was terribly hot and stuffy. I don't know what we can do about cooling it off, and if it becomes oppressive, if you want, with the approval of the lawyers, which I am sure I have, I would be glad to put some more chairs in the robing room and let you sit in there. It is a little smaller, but it has a window which can be opened if it gets too stuffy.

Do you want to start out in the jury room? Why don't you do that, but if it becomes bad, then knock on the door and tell the marshal, and I am now advising

everybody in the presence of everybody that I authorize a transfer of the jury from the jury room to the robing room if they asked to be transferred.

All right, ladies and gentlemen, will you please go with the marshals and commence your deliberations. I believe I have a copy of the indictment and I am handing over a copy of the indictment to Mr. Weiner at this time.

(Jury leaves to commence deliberation)

MR. FISHER: Your Honor, before you give that, might I address the Court at the side bar?

THE COURT: All right. I will send it in.

Mr. Fisher.

MR. FISHER: Just with respect to the indictment to be consistent --

THE COURT: Do you want to strike the references?

MR. FISHER: Yes.

THE COURT: Mr. Pykett, do you have any objections to striking the references to the --

MR. PYKETT: Your Honor, I am not that familiar with that. May I see what you are referring to?

THE COURT: Yes. The conspiracy charges Mr. Lam and names him as a conspirator and makes reference to him in these two overt acts which I have already

1 instructed the jury to disregard. Mr. Fisher is suggest-
2 ing that that material should be visually stricken when
3 the indictment goes into the jury.
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5 MR. PYKETT: I have no objection to that, your
6 Honor.

7 THE COURT: All right. There is no objection,
8 and I will leave it to you, Mr. Fisher and Mr. Pykett,
9 to make the necessary change.

10 MR. FISHER: Thank you, your Honor.

11 MR. ROSENTHAL: Your Honor, may the defendants
12 remain in the courtroom for a while, if it is no great
13 inconvenience to the marshals?

14 THE COURT: Yes, it is all right with me.

15 Gentlemen, I will be in chambers at least until
16 12:30. I may leave at that time. I will leave at the
17 normal lunchtime, a quarter of one, until 2:00. I will
18 be available otherwise.

19 Now, I ask your assistance to the maximum
20 possible in avoiding the necessity for calling me. With
21 regard to exhibits for example, I expect you will be able
22 to agree as to what they are. With regard to testimony,
23 there may be questions. I recognized yesterday when I
24 spoke to Mr. Bannigan about what the jury is asking for,
25 or how much ought to go in, and if I have to be here I

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will, but I hope that that can be avoided.

MR. RASSNER: Your Honor, one thing, I have a pre-trial conference before Judge Gagliardi. I wonder if I may be excused to go up there and they can call me in the other courtroom if something happens.

THE COURT: What time is it?

MR. RASSNER: It was supposed to be on this morning. I had better get up there and see if it is still on. It will be in Room 619.

THE COURT: All right.

(Recess)

(In the robing room)

THE COURT: For the record, I have received three notes which will be marked Court's Exhibits 1, 2 and 3.

(Court's Exhibits 1, 2 and 3 received in evidence)

THE COURT: Exhibit No. 1 asks for transcript of the arresting officer's testimony when he picked up the Lais. I take it, Mr. Rosenthal --

MR. ROSENTHAL: I found that, both the direct and cross on that.

THE COURT: Second, the pictures taken on July 11, 1973.

MR. ROSENTHAL: There were no pictures on July 11. There were pictures taken of Mr. Chea's residence on the 12th.

THE COURT: Well, I will ask the foreman to tell us what pictures he is talking about.

Third, papers that the Lais filled out at the Drug Enforcement Office.

MR. ROSENTHAL: That would be the consents and the map, the formal consent and the informal consents, I would take it.

THE COURT: Well, anyway two documents, one on

yellow paper and one --

MR. ROSENTHAL: Yes, sir.

THE COURT: Number 3, the Judge's charge on entrapment. I want to comment on that. I will do it now.

Mr. Rassner is the one concerned, I do not expect to read back the whole charge on entrapment. In the first place it would take time, in the second place my experience is that if you haven't understood it the first time it is better to try to approach it some other way the second time.

I therefore intend merely to state that the law with regard to entrapment is as follows: In the first place, the issue does not arise unless the jury finds that there is some credible evidence that a government agent or employee induced Mr. Chea to commit this crime. If they find that, then they must find in order to convict that the government has established beyond a reasonable doubt that Mr. Chea was ready and willing to perform this, in spite of the inducement.

MR. RASSNER: I will consent to that. I would ask your Honor just to add those two words, without persuasion, at the end in accordance with the Sorells, the Sherman, U.S. versus Reilley.

THE COURT: Without persuasion or inducement,

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you mean.

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MR. RASSNER: Yes, just at the very end of your sentence, otherwise, your Honor, I have no exception, I agree with it completely.

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MR. PYKETT: Your Honor, in every case there is some inducement on the part of the government agent here. It is really the planting of the scene in the mind of the defendant, that is, I think when we refer to entrapment we are talking about --

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THE COURT: I don't think in every case there is some inducement by a government officer. I mean, it may be a fairly common fact in such cases, and then its always up to the judge in the first instance to determine whether there is enough to go to the jury, but I think the very fact I have allowed that issue to go to the jury is sufficient for me to put it the way I have. I really don't believe put in that simple and fundamental language it is so hard for laymen to understand what the concept is.

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I will consider the question of the phrase, planting the seed, but at the moment I am inclined to leave it the way I --

MR. RASSNER: I would make one comment on that. I think planting a seed places a, really not a -- a proper

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2 interpretation of the defense of entrapment. Suppose
3 the man somewhere along the line has changed his mind,
4 decided not to commit the crime, and at that point he
5 is induced by a government agent to commit --

6 THE COURT: I suppose philosophically you would
7 say the seed was planted at that point, but I don't want
8 to get bogged down in that discussion. The reason I like
9 to use the words, inducement or persuasion, is I think
10 they have certain understood meanings, at least among
11 lawyers and judges, and I think laymen understand what
12 they mean too.

13 To go on with Exhibit No. 2, the second item
14 asks for the tape and transcript of the conversation
15 between Agent Quarequo and Chea in the car. That is,
16 "Do you believe that he never did it before?" Have you
17 been able to locate that?

18 MR. FISHER: Yes. I just wanted to clear that.
19 When they say between Quarequo and Chea, I am sure they
20 mean between Quarequo and Tripp, because they quote the
21 line, so I don't think there is any argument about that.
22 We have found that.

23 THE COURT: Third, Mr. Lai's business cards.
24 There is no problem about that.

25 MR. ROSENTHAL: No.

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2 THE COURT: Message number 3 asks for the tape
3 and transcript, referring to Lan Man Chung.

4 MR. FISHER: I believe they are, number one, there
5 are two conversations, only one of which was on tape.
6 That's the one -- that's one of the tapes I played in
7 summation, 3529.

8 THE COURT: Let's go on where there is a question
9 of what the word "No" means.

10 MR. FISHER: Right. Now we have the tape, we
11 have only one machine, we haven't found the tape yet, and
12 we have the transcript. So we are pretty ready on that.

13 THE COURT: Next, Lan Man Chung's address book.
14 They mean that one page, Exhibit 12.

15 MR. FISHER: Yes.

16 THE COURT: And finally, Agent Quarequio's testi-
17 mony in the Italian restaurant about Lan Man Chung's
18 partnership with Mr. Chea.

19 MR. FISHER: I think we agree on that.

20 Now, with regard to that, before we -- well,
21 with regard to cross-examination I would offer -- frankly
22 I think my whole cross was directly to that one thing,
23 but admittedly circuitously I am not -- I am asking for
24 a few pages, 204 through half of 206, which talks about,
25 you had this partner, you had that partner, and you had

Ja B. Lam. The idea of the puffing.

THE COURT: If it is only two or three pages --

MR. RASSNER: I would object to that part of that. I think it should stop at a certain point, and Mr. Fisher seems to think it should continue. So we may need --

THE COURT: Can you show me what the parts of this agreement are?

MR. ROSENTHAL: I have it here.

MR. RASSNER: I think it can stop at the end of line 6.

THE COURT: On what page?

MR. RASSNER: 205. Let's take a look at 204 first just to get the proper sequence.

THE COURT: You propose to begin where?

(Mr. Bannigan entered the robing room)

THE COURT: Why don't you, Mr. Bannigan, look at these slips while I am ruling on a dispute between defense counsel.

MR. FISHER: Line 5 (indicating).

MR. BANNIGAN: Well, that is in evidence.

THE COURT: What do you want to go to?

MR. FISHER: Through line 14 on page 206.

THE COURT: Gentlemen, can I have your attention for a minute? With regard to this dispute between Mr.

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2 Fisher and Mr. Rassner as to how much of the cross-examina-
3 tion of Quarequo should be read relating to the state-
4 ment by Chea that Lam wanted to be his partner, I will
5 rule in Mr. Rassner's favor. It seems to me that the
6 remaining testimony which Mr. Fisher wishes to read is
7 very peripheral to the question asked, even if it is
8 related to it, and that it might be damaging, gratuitously
9 damaging to Mr. Chea.

10 MR. FISHER: Then I would ask your Honor that
11 page 206 be read. I don't think there is any objection
12 to 206, lines 1 through 14.

13 THE COURT: Do you have any objection?

14 MR. RASSNER: I haven't looked at it yet. I
15 have no objection to that.

16 THE COURT: All right. Do you want to specify
17 and let me mark the portions? You want me to stop on
18 page 205 at line 6; is that correct?

19 MR. RASSNER: Yes, sir.

20 THE COURT: And pick up again at the top of
21 page 206 and run to line 14?

22 MR. FISHER: Line 1 through line 14.

23 MR. RASSNER: There is no objection to that,
24 your Honor.

25 MR. FISHER: Now, your Honor, there is one more

thing on the last note of considerable importance, I think. They also asked for the card found on the defendant Lam of Leico Business Company.

THE COURT: Wait a minute.

MR. FISHER: The business card.

THE COURT: Number 2 is business card in -- possession, misspelled -- of Lan Man Chung.

MR. FISHER: I am sure they are referring to Leico business card. The problem is there was no Leico business card found on Lam, and I ask your Honor to very strongly make that clear to them.

THE COURT: I will.

MR. BANNIGAN: It was not on him.

THE COURT: That's right.

MR. BANNIGAN: Have you ruled on any of these other ones?

THE COURT: Off the record.

(Discussion off the record)

THE COURT: With regard to Item No. 1 of Exhibit No. 1, which is Quarequio's testimony about arresting the Lais --

MR. ROSENTHAL: Not Quarequio.

MR. BANNIGAN: Maher's.

THE COURT: Maher's rather, Mr. Rosenthal says

1 he assumes that the cross-examination will be read as
2 well as the direct. Is it very long?

3 MR. BANNIGAN: Quite long. I think an easy
4 way to do it is just say, we will read until you come
5 to the point where you want us to stop.

6 THE COURT: They are not contiguous.

7 MR. ROSENTHAL: They are not.

8 THE COURT: The direct and cross aren't con-
9 tiguous. So what I will do is this, Mr. Rosenthal, I
10 will ask them, before I start reading it, whether they
11 want the direct testimony or the cross-examination, or
12 both. I will leave it entirely up to them.

13 Now, gentlemen, with regard to the reading of
14 testimony, now that it has been settled, I would ask
15 your indulgence not to sit there and listen to it. Do
16 you need me to listen to it?

17 MR. ROSENTHAL: No. And with the understanding
18 that the reporter would not read colloquy and objections
19 and the like, just read the actual testimony.

20 THE COURT: Correct.

21 (In open court - jury present)

22 THE COURT: Good afternoon, everyone. Ladies
23 and gentlemen, I have received three notes from you with
24 a variety of items. I am going to read them into the
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record and comment on each one. Some of them are not entirely clear to counsel and myself and we would have to have some clarification from you, Mr. Weiner, but on the whole they are very understandable and I thank you for being as careful as you have been.

Number one, Court Exhibit 1, transcript of the arresting officer's testimony when he picked up the Lais.

The first question I have to ask, and I think I am going to ask my law clerk to make a list of the things that I may ask you to return to the jury room and talk about and then come back and answer, I think we agreed to know whether you want to hear direct testimony of Agent Maher, who was the officer in question, or the cross-examination of Agent Maher or both.

Do you understand that? Perhaps you would like to make a note of the questions that I am putting to you also.

In other words, direct or cross or both on the arresting officer's testimony.

The second question has to do with the second item, you talk about pictures taken on July 11, 1973.

Everybody is in agreement that there were no pictures actually taken on that date, so if you will tell us after you return from the jury room what the subject

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2 matter of the pictures is, we will be able to identify
3 them.

4 Item No. 3 are the papers that the Lais filled
5 out at the Drug Enforcement Office. They consist of what
6 we have referred to as the map and the consent to search,
7 and I think Mr. Bannigan, both can be delivered to Mr.
8 Weiner at this time.

9 MR. BANNIGAN: They are Government's Exhibits
10 23 and 23-A (handing).

11 THE COURT: All right.

12 The next is my charge on entrapment.

13 Ladies and gentlemen, I am not going to repeat
14 my entire charge on that subject for two reasons: In
15 the first place, it is fairly long, and in the second
16 place, if I wasn't quite successful in making you under-
17 stand the law on that subject as I did give it to you
18 before, perhaps a new approach to the subject would be
19 better and more successful. So I am going to give you
20 a simplified instruction, but I think it contains all
21 of the material really that I told you about earlier.
22 That is as follows:

23 The question of entrapment is not even raised
24 unless the jury finds that there is credible evidence
25 that a government agent or employee induced or persuaded

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2 Mr. Chea to commit the transactions that he is alleged
3 to have committed. That is number one.

4 If you do find that there is such credible
5 evidence, then you cannot convict Mr. Chea unless you
6 find that the government has proven beyond a reasonable
7 doubt that inspite of the inducement and persuasion, Mr.
8 Chea was in any case ready, willing and able to commit
9 those transactions.

10 Does the jury understand that instruction?
11 Is there anybody who would like any clarification on that?

12 All right. I think just for those two simple
13 propositions perhaps you won't have any difficulty.

14 Next is Item 2 on Exhibit 2, that is tape and
15 transcript of conversation between, as you put it, Agent
16 Q and Chea in the car.

17 I believe Mr. Weiner that you mean between
18 Agent Q and Mr. Tripp in the car, or Agent Tripp, be-
19 cause you have in paren, "Do you believe that he never
20 did it before?" and that conversation was between the
21 two of them.

22 THE FOREMAN: What we wanted was the whole
23 tape to hear what came before, plus --

24 THE COURT: Then that is the tape you are
25 referring to? Everybody agrees that that is the tape?

1 All right, the jury indicates that it is. And
2 the whole tape will be played.

3 Next item is No. 3 on Court Exhibit 2, Mr. Lai's
4 business cards. Do you have those, Mr. Bannigan?

5 MR. BANNIGAN: I have one, yes.

6 THE COURT: You don't want more than one, do
7 you ladies and gentlemen?

8 MR. ROSENTHAL: There was a box.

9 MR. BANNIGAN: Do you want the whole box?

10 MR. ROSENTHAL: The box was marked into evidence
11 and one individual card was taken from that box.

12 THE COURT: I understand that, Mr. Rosentnal,
13 but I think the jury indicated that they are not concerned
14 about the whole box. Am I right?

15 All right. That exhibit has now been delivered.

16 THE FOREMAN: Your Honor, on this we would like
17 to know where this card came from? Did it come from the
18 box or were there cards taken off --

19 THE COURT: The exhibit in your hand? Will you
20 give me the number of it?

21 THE FOREMAN: 27-A.

22 MR. ROSENTHAL: It came from the box, 27, the
23 box of cards, and that in turn came from Mr. Lai's home.

24 THE COURT: That is what Mr. Rosenthal thinks,
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2 Mr. Bannigan is shaking his head.

3 MR. BANNIGAN: As I understood the question
4 he wants to know is whether any of these cards were taken
5 off people.

6 THE FOREMAN: That's correct.

7 THE COURT: One thing at a time. The particular
8 card that you are holding in your hand --

9 MR. BANNIGAN: That one came out of the box,
10 that one did, yes (indicating).

11 THE COURT: All right.
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1 And you have --

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3 MR. ROSENTHAL: I think the record should show
4 that that box was in the home of Mr. and Mrs. Lai.

5 THE COURT: All right. Perhaps so. I think
6 maybe your unresolved question will be answered when I com-
7 ment on the next item.

8 The next item is, business card in possession of
9 Lam Man Chung. My impression is that you are referring
10 there to a business card perhaps of Mr. Lai; am I correct in
11 that impression?

12 THE FOREMAN: Yes, I believe so.

13 THE COURT: But there is no such business card
14 in the possession of Lam Man Chung. There was, however, a
15 business card of Mr. Lai in the possession, found in the
16 possession of Mr. Chea. Is that what the jury wants? On my
17 explanation?

18 THE FOREMAN: Yes.

19 THE COURT: That seems to be it.

20 MR. BANNIGAN: I tender Government's Exhibit 15
21 (handling).

22 THE COURT: The next item, number 3, Exhibit 3,
23 is Lam Man Chung's address book, and that, of course, you
24 mean, I think, one page because it's only the page that is in
25 evidence; is that correct, Mr. Weiner?

THE FOREMAN: Yes.

THE COURT: As to the address book. All right. Would you deliver that page?

MR. BANNIGAN: Government's Exhibit 12 (handing).

THE COURT: And finally you have asked for Agent Quarequio's testimony in the Italian restaurant about Lam Man Chung's partnership with Mr. Chea, the parties have located that testimony and will be prepared, or, the court reporter will be prepared to read that to you.

Am I incorrect about that?

MR. FISHER: Well, I think you skipped something on the sheet, your Honor. I don't think you covered Court Exhibit 2.

THE COURT: Which item do you think I didn't cover?

MR. FISHER: I believe there was a request for the "no."

THE COURT: You are absolutely right. I will come back to that in a moment.

MR. FISHER: I'm sorry.

THE COURT: That's all right. After the questions have been answered that I asked you to jot down, the reporter will be prepared to read the testimony that you have asked for, and the attorneys or the reporter will be prepared to

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2 play the tapes that you want to hear.

3 Now, there was one further thing which Mr. Fisher
4 reminds me of, that is Item No. 1 of Court Exhibit 3 which
5 you have stated as tape and transcript, referring to Lam
6 Man Chung, and we believe that that is the tape in which
7 Mr. Fisher and Mr. Bannigan disagree as to what the proper
8 meaning is; are we correct about that?

9 THE FOREMAN: That's right.

10 THE COURT: All right, and that will be played
11 for you, too.

12 MR. BANNIGAN: Your Honor, there was a request,
13 I believe for the transcript and tape of the June 25th con-
14 versation in which we have two agents speaking, and I
15 believe Mr. Foreman said they wanted the entire thing.
16 Now, do they want the entire tape played or do they want the
17 entire transcript, the accuracy of which has been stipulated
18 by all counsel?

19 THE FOREMAN: We want both, because the tape is
20 very difficult to hear.

21 MR. BANNIGAN: Well, the whole tape has never
22 been played.

23 MR. FISHER: If your Honor please, I would object
24 to any comment by Mr. Bannigan at this time.

25 THE COURT: Well, I think that we should replay

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2 only what was played during the course of the trial.

3 Mr. Fisher?

4 MR. FISHER: If your Honor please, I specifically
5 offered the whole thing for that purpose.

6 THE COURT: Well, I don't recall frankly whether
7 the whole thing --

8 MR. FISHER: My recollection is --

9 THE COURT: Let me suggest that the ladies and
10 gentlemen of the jury return to the jury room to answer the
11 two questions that I asked, just let the marshal know as
12 soon as you have answered those questions and come back in
13 here, and in the meantime we will try to deal with this tape
14 transcript question.

15 Mr. Fisher, why would you feel it to your
16 advantage to have the whole tape played?

17 MR. FISHER: I think, your Honor, what the jury
18 is grappling with now is whether the explanation by
19 Mr. Quarequo with that last statement was a truthful one
20 and I think they want to hear if anywhere on that tape there
21 is anything about, "This is the first time I ever gave any-
22 body a sample."

23 I think they may also have come to the conclusion
24 that these transcripts aren't as good as the tape. And since
25 I feel that's a pretty strong point in our defense, and since

they specifically asked for the whole tape I think their request should be honored, your Honor.

THE COURT: How long would the whole tape take?

MR. FISHER: I would imagine about a half hour.

THE COURT: Let me tell them that it would take a whole half hour and see whether they want to hear it for a whole half hour or not.

I am not going to go beyond that, but I will do that.

MR. BANNIGAN: I have no objection either way. I just thought it would be easier. I don't care whether it is played or not.

THE COURT: I agree. They are entitled to anything they want, but if it were to take six days and they didn't know it, I would at least want them to know about it in advance.

MR. FISHER: In the meanwhile -- well, let's not do anything.

I hope your Honor will note that it will take us about five minutes to locate the other tape they want which is about a minute, but bear that in mind.

THE COURT: Well, you can handle that any way you want. I think the reporter might as well read them what he can read them and you can play what is ready to play,

2 then even in my absence it seems to me you can let them go
3 back to the jury room and let the marshal know when you are
4 ready to let them hear the rest of it.

5 MR. FISHER: That's fine, your Honor.

6 MR. PYKETT: Your Honor, may I be excused?

7 THE COURT: Yes, you may, Mr. Pykett. Thank you
8 for helping out.

9 I have received another message. This is one
10 way of solving the problem. It will be marked Exhibit 4.

11 (Court Exhibit No. 4 received in evidence.)

12 THE COURT: It says, Maher's testimony, both
13 direct and cross, and it says, all pictures taken.

14 Will you bring the jury in, please.

15 (Jury enters the courtroom.)

16 THE COURT: I have got your note saying that you
17 would like to hear both direct and cross-examination of
18 Agent Maher and that you would like to see all the pictures.

19 Have you got all the pictures?

20 MR. BANNIGAN: We have.

21 THE COURT: And will you respectively state what
22 they are?

23 MR. BANNIGAN: 17D, 17A, 17B, 17C.

24 THE COURT: It might be well just for the jury's
25 benefit, unless there is any dispute about it, to state for

the record what the pictures are.

MR. BANNIGAN: These are the surveillance photos.

THE COURT: All right.

MR. FISHER: I have defendant Chea's exhibits B and B1 through 5 inclusive which are the pictures of Mr. Chea's apartment taken at the time of the search.

THE COURT: All right. Thank you.

Now, I'm sorry to send you back and forth so many times, ladies and gentlemen, but there is one further matter I would like you to discuss among yourselves and then answer to me.

In regard to the transcript and tape that we last talked about, referring to Mr. Lam Man Chung, we do have the entire tape. I want you to know that it will take about a half hour to play it. Since you have never heard it in full you didn't know that and I think you ought to discuss among yourselves whether you would like to hear the whole tape.

The whole transcript is available in any case, and whatever part of the tape you would like to hear will be played.

Will you return to the jury room and make a decision? Am I wrong?

MR. BANNIGAN: I believe so, your Honor. I

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2 believe two tapes we're talking about here, the tape the
3 jurors have not heard is the tape in which at the end of
4 which the two agents are speaking. That has nothing to do
5 with --

6 THE COURT: Excuse me. I have got my tapes
7 mixed up. In any event then the tape at the end of which
8 what you did ask to hear Agent Quarequio is talking to
9 Agent Trip and talking about whether they would believe
10 that Mr. Chea did or didn't do something before. You have
11 heard the end of that, you have not heard the whole tape.
12 The whole tape will take about 30 minutes to play; is that
13 correct?

14 MR. BANNIGAN: About that.

15 THE COURT: And you should consider whether you
16 want to hear the whole tape or only that portion that you
17 have heard in the past.

18 Would you return to the jury room and reach a
19 consensus on that, then let me know?

20 And when you have an answer, just tell the
21 marshal to come back here, because you have to come back
22 here any way to hear the reading of the testimony.

23 (Jury leaves the courtroom.)

24 (Jury enters the courtroom.)

25 THE COURT: I called you in, maybe Mr. Weiner

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1 has the answer to my question on his paper there, but
2 because I wanted to be sure there was no misunderstanding.
3 I believe when I sent you back the last time I asked you
4 to decide whether you wanted to hear all that tape involving
5 Agent Quarequoio and Agent Trip or just part of it, and since
6 it has taken you as long as it has, I wondered whether you
7 understood that that is what I wanted to know from you.
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9 THE FOREMAN: Yes.

10 THE COURT: Have you reached a decision on that?

11 THE FOREMAN: Yes, we would like the complete
12 transcript of the tape and we would like to hear the last
13 section of it.

14 THE COURT: All right. Mr. Fisher?

15 THE FOREMAN: Your Honor, on the other tape, the
16 one where Mr. Chea mentions Ja B. Lam --

17 THE COURT: Not Mr. Chea, he doesn't mention
18 Ja B. Lam -- well, I won't characterize it. All right, go
19 ahead.

20 THE FOREMAN: Where his name comes up. We would
21 like just that section and the transcript on that section.

22 THE COURT: Very good. Now, ladies and gentlemen,
23 since I have other duties, and since I believe I have
24 settled all questions that there were as to what you wanted
25 and any disputes that there may have been which were very

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2 minor between the government and defense counsel as to how
3 they should be handled, I am going to return to my chambers
4 to do other work. I will be available if needed. It does
5 seem to me, ladies and gentlemen, that since you are right
6 in the throes of this we should stay at it, and I would
7 intend to arrange for dinner at about 6:30 if that is
8 necessary, I am telling you now so that you can make your
9 plans accordingly.

10 If there are any of you that need to have
11 telephone messages sent because of that, you can, through
12 the marshal, give the number of the telephone, the name of
13 the person and the message, and Mrs. Panzer, the court clerk,
14 will make the call for you. We cannot allow you to call
15 yourselves.

16 Thank you.

17 (Record read by the court reporter.)

18 MR. FISHER: We are going to give you the trans-
19 cript now of the other tape and we will set it up.

20 (Tape recording played to jury.)

21 MR. BANNIGAN: I would like to stop here. Let's
22 get the judge. I would like the judge down here.

23 (In open court; jury not present.)

24 MR. FISHER: In the absence of the Judge, but
25 in the presence of Mr. Bannigan I would like the record to

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2 reflect that at the jurors' request the tape portion relating
3 to Exhibit 3529 was played three times.

4 (In open court; jury present.)

5 THE COURT: Mr. Weiner, I asked you to bring in
6 the verdict slips for two reasons. In the first place I
7 wondered whether by chance you have reached a verdict on any
8 of the counts by this time, and if you had it would be
9 appropriate for me to ask what the verdict is.

10 Have you?

11 THE FOREMAN: No, I have to say no to that.

12 THE COURT: All right. The other thing is I
13 think it would be a good idea for us to go to dinner at this
14 time. I assume arrangements have been made. I think it would
15 be better that we keep the verdict slips with the clerk
16 until you return from dinner, and of course we will return
17 them to you.

18 All right, ladies and gentlemen, as soon as you
19 get back, you can start to work, but I hope you have a chance
20 to relax at dinner.

21 MR. BANNIGAN: What time, your Honor? Any
22 particular time?

23 THE COURT: Well, would you please do your best
24 to be back here by quarter of eight?

25 (Dinner recess.)

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(In open court; jury present.)

THE COURT: Be seated, please..

THE CLERK: Ladies and gentlemen of the jury,
please answer to your presence..

Mr. Weiner?

MR. WEINER: Here.

THE CLERK: Mr. Lubin?

MR. LUBIN: Here.

THE CLERK: Mr. Cousins?

MR. COUSINS: Here.

THE CLERK: Miss Heinman?

MISS HEINMAN: Here.

THE CLERK: Miss Poster?

MISS POSTER: Here.

THE CLERK: Mr. Lunney?

MR. LUNNEY: Here.

THE CLERK: Miss Pincour?

MISS PINCOUR: Here.

THE CLERK: Mr. Berretto?

MR. BERRETTO: Here.

THE CLERK: Mr. Bynoff?

MR. BYNOFF: Here.

THE CLERK: Miss Bradley?

MISS BRADLEY: Here.

THE CLERK: Miss Lindrose?

MISS LINDROSE: Here.

THE CLERK: Mr. Berkowitz?

MR. BERKOWITZ: Here.

THE CLERK: Mr. Foreman, have you reached a verdict?

THE FOREMAN: Yes, we have.

THE COURT: Mr. Weiner, I am asking Mrs. Panzer to ask you for your verdict as to each defendant individually in the order of their being named in the indictment, that is, Mr. Lai first, Mr. Chea second, Mr. Lam Man Chung last.

THE CLERK: How do you find as to defendant Lai on Count 1?

THE FOREMAN: Guilty.

THE CLERK: How do you find as to defendant Lai on Count 2?

THE FOREMAN: Guilty.

THE CLERK: How do you find as to defendant Lai on Count 3?

THE FOREMAN: Guilty.

THE CLERK: How do you find as to defendant Lai on Count 6?

THE FOREMAN: Guilty.

THE CLERK: How do you find as to defendant Chea

on Count 1?

THE FOREMAN: Guilty.

THE CLERK: How do you find as to defendant Chea
on Count 2?

THE FOREMAN: Guilty.

THE CLERK: How do you find as to defendant Chea
on Count 4?

THE FOREMAN: Guilty.

THE CLERK: How do you find as to defendant Chung
on Count 5?

THE FOREMAN: Guilty.

THE CLERK: So say you all?

THE COURT: Gentlemen, do you wish to have the
jury polled?

MR. FISHER: Yes, your Honor.

THE CLERK: Mr. Weiner, is that your verdict?

MR. WEINER: Yes, it is.

THE CLERK: Mr. Lubin, is that your verdict?

MR. LUBIN: It is.

THE CLERK: Mr. Cousins, is that your verdict?

MR. COUSINS: It is.

THE CLERK: Miss Heinman, is that your verdict?

MISS HEINMAN: Yes, it is.

THE CLERK: Miss Poster, is that your verdict?

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2 MISS POSTER: Yes.

3 THE CLERK: Mr. Lunney, is that your verdict?

4 MR. LUNNEY: Yes.

5 THE CLERK: Miss Pincour, is that your verdict?

6 MISS PINCOUR: Yes, it is.

7 THE CLERK: Mr. Berretto, is that your verdict?

8 MR. BERRETTO: Yes.

9 THE CLERK: Mr. Bynoff, is that your verdict?

10 MR. BYNOFF: It is.

11 THE CLERK: Miss Bradley, is that your verdict?

12 MISS BRADLEY: Yes.

13 THE CLERK: Miss Lindrose, is that your verdict?

14 MISS LINDROSE: Yes.

15 THE CLERK: Mr. Berkowitz, is that your verdict?

16 MR. BERKOWITZ: Yes.

17 THE COURT: Ladies and gentlemen, I want to thank
18 you for the industry and patience which you have put into
19 this case. By thanking you I am not commenting on the
20 verdict, I don't think it is the judge's province to comment
21 on the verdict, but I do always recognize that for a jury
22 to determine the guilt of any defendant is a very demanding
23 proposition, as it should be, and in this case, however, I
24 want to make a special remark.

25 The case had its particular difficulty in being

2 spread over a long period of time, having you here for a
3 week, having you away for two and a half weeks and bringing
4 you back. You have really been the most responsible jury
5 in terms of attendance, attention, promptness and general
6 reliability of any juror that I have had in my service on
7 the bench, and I thank you very much.

8 You are discharged at this time.

9 Are there any particular instructions for the
10 jury?

11 THE CLERK: No, your Honor, they are released
12 now and I have their certificates for them.

13 THE COURT: All right. You should be receiving
14 your compensation in the near future, and thank you very
15 much, ladies and gentlemen.

16 Is there any assistance we can give any of the
17 jurors to get home at this hour?

18 A MARSHAL: You can authorize transportation for
19 them, your Honor.

20 THE COURT: How long would it take to get it?

21 A MARSHAL: It will take about a half hour.

22 THE COURT: If any of you want to wait a half hour
23 I will be glad to authorize it. If you prefer to leave then
24 you can take the subway here, there are problems such as
25 there are in any part of the city, but that is up to you.

How many of you would like to have transportation home?

Well, those of you who wish to, will you see the marshal in there and he can make the necessary arrangements, and you can just wait in the jury room until the transportation is available.

Thank you very much.

(Jury discharged.)

THE COURT: All right, gentlemen, I am setting the sentence date for Friday, December 21, 1973 at 9:45 a.m. in Room 501 of the courthouse.

Does that present a problem to you, Mr. Bannigan?

MR. BANNIGAN: No, I have an application, your Honor. That is that all defendants be remanded, that all bail be revoked. There is presently bail.

THE COURT: They are in custody though?

MR. BANNIGAN: Yes, but there is bail. I am asking there be no bail in light of the large amount of narcotics in this case, the size of the case. There is a possibility that one might jump bail. At this juncture I think it would be very dangerous.

THE COURT: I will hear defense counsel, but I am predisposed to grant his application which can always be reviewed, of course.

MR. ROSENTHAL: I think it is academic, your

Honor. Nobody has been able to furnish bail.

THE COURT: Since it is academic, I will grant it. That merely means it puts the burden on you to apply for bail if you are in a position to do so, rather than for him to apply in case you are able to do so.

Is there anything further at this time?

MR. FISHER: If your Honor please, on behalf of defendant Lam I move to reserve all motions until the date of sentence.

THE COURT: That motion is granted to all defense counsel, except I make this observation that I always do at this particular time in the course of a trial, and that is that if you mean to press your motions with true seriousness then I want to have the papers no less than two weeks before the date of sentence so that the United States Attorney can apply within a week thereafter and I can give them serious attention.

All right, gentlemen. Thank you very much. I think you have all done a very responsible job in the trial of this case.

(Court recessed; time noted: 9:25 p.m.)

STATE OF NEW YORK)
: SS:
COUNTY OF RICHMOND)

ROBERT BAILEY, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the 1 day of March, 1974 deponent served the within *Appendix* upon U.S. Atty. *Southern District of N.Y.*

attorney(s) for *Appellee*
in this action, at *U.S. Courthouse
Foley Sq.
N.Y.C.*

the address designated by said attorney(s) for that purpose by depositing 3 true copies of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States post office department within the State of New York.

Robert Bailey
ROBERT BAILEY

Sworn to before me, this
1 day of *March*, 1974

William Bailey
WILLIAM BAILEY

Notary Public, State of New York
No. 43-0132945
Qualified in Richmond County
Commission Expires March 30, 1976